IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1823 OF 1998

Reliance Chemotex Inds. Ltd. ...Plaintiffs

Versus

Star Spin and Twist Machineries Ltd. ...Defendants

Shri M.G. Mimani for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 01, 2007.

ORAL JUDGMENT:

1. The suit is listed under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record an affidavit of evidence of Shri Madan Gopal Rathi, a constituted attorney of the Plaintiff. The said affidavit is marked "X" for identification and is taken on record. The learned counsel for the Plaintiffs has tendered documents on record alongwith the list. The documents alongwith list are taken on record and marked "Y" (collectively) for identification.

2. According to the case of the Plaintiffs, they placed an order on 28th September, 1994 with the agents of the Defendants for purchasing 10 TFO machines manufactured by the Defendants. The Defendants by their Order Confirmation dated 02nd March, 1995 confirmed the

said order placed by the Plaintiffs.

3. According to the case of the Plaintiffs, only five machines were supplied by the Defendants against the said order and the Defendant submitted to the Plaintiffs an invoice for an aggregate sum of Rs.1,45,73,345/-. The Defendants also submitted to the Plaintiffs their credit notes for an aggregate amount of Rs.41,20,000/- towards price difference in respect of the said machines. The Plaintiffs paid various amounts to the Defendants towards the machines. According to the case of Plaintiffs, after adjusting the amount of the credit notes and the payments made by the Plaintiffs, a sum of Rs.13,67,265/- remained as due and payable by the Plaintiffs to the Defendants in respect of the said machines.

4. The machines were installed and erected at the Plaintiffs' works at Udaipur. However, it was revealed that there were defects in the machines. A communication was accordingly issued on 06th January, 1996 by the Plaintiffs to the Defendants. By letter dated 16th January, 1996, the Plaintiffs intimated to the Defendants about further defects found in the said machines. It is stated that by a fax dated 18th January, 1996 the Defendant confirmed of having agreed

to depute their engineer to have a detailed study of the problems faced by the Plaintiffs. It is alleged that by another fax message dated 27th March, 1996 the Defendants confirmed the said defects.

5. The Plaintiffs were served with a notice by the Deputy Commissioner of Commercial Taxes, Assessment, Dharwar requiring the Plaintiffs to make payment for and on behalf of the Defendants to them from the outstanding amount, if any, payable by the Plaintiffs to the Defendants. A true copy of said notice was also forwarded by the Plaintiffs to the Defendants.

6. According to the Plaintiffs due to the defects in the machines, they have suffered loss to the tune of Rs.17,78,520.64/-. The Plaintiffs accordingly prepared a debit note dated 04th July, 1997 and forwarded the same to the Defendants. According to the Plaintiffs, they were required to purchase spare parts from the local market in India for putting machines in order and cost of the said spare parts is Rs.8,43,153.64/-. A sum of Rs.1,68,477/- is claimed by the Plaintiffs being the amount of quality claim allowed by the Plaintiffs to their foreign buyers on account of defective materials manufactured through the said machines. A sum of Rs.7,66,890/- is claimed on account of production loss

due to defective materials as particularly stated out in the debit note dated 04th July, 1997. The Plaintiffs are claiming amounts of Rs.2,09,679/- and Rs.3,19,472/- on account of spare parts imported by them as per various bills. Thus, the total claim of the Plaintiffs is in the sum of Rs.23,07,671.64/-. After deducting the sum of Rs.13,67,265/- being the balance price payable by the Plaintiffs of the said machines, a claim is made in the suit in the sum of Rs.9,40.406.64/-. A legal notice was issued by the Plaintiffs to the Defendants on 02nd August, 1997 calling upon them to pay the amount. However, the Defendants have not responded.

7. The claim of the Plaintiffs in the suit has been proved by the affidavit of Shri Madan Gopal Rathi. In so far as the original of Order Confirmation dated 02nd March, 1995 is concerned, in the said affidavit it is stated that the original order confirmation has been misplaced and lost. Therefore, a true xerox copy of the said document is produced on record. A case is made out for permitting the Plaintiff to lead secondary evidence of the said document. In view of the averments made in the plaint, the affidavit of evidence and the documents placed on record, the Plaintiffs are entitled to a decree. The Plaintiffs have claimed further interest at the rate of 21 per cent per annum. There is no

agreement between the parties as regards payment of interest at a particular rate. Considering the facts and circumstances of the case, further interest will have to be allowed at the rate of 12 per cent per annum.

8. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with a modification that further interest will be at the rate of 12 per cent per annum from the date of filing of the suit till payment or realisation. The Plaintiffs will be entitled to refund of the court fees, if any, in accordance with rules. Certified copy is expedited.

JUDGE